



THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

AUSTIN, TEXAS 78711

March 23, 1971

Honorable Menton J. Murray
Chairman, Higher Education
House of Representatives
Austin, Texas 78711

Opinion No. M-818

Re: Validity of House Bill 487
of the 62nd Leg., R.S. 1971,
authorizing the governing
body of certain state-supported
colleges and universities to
close streets and alleys run-
ning through the campus.

Dear Representative Murray:

You have requested our opinion on the validity of House Bill 487 of the 62nd Legislature, R.S. 1971. Section 1 of House Bill 487 provides:

"Section 1. The governing body of a state-supported college or university in a county having a population in excess of 1,500,000 may vacate, abandon, and close a street or alley running through the campus, if the state-supported college or university owns all of the real property abutting the street or alley."

Apparently, the effect of the Act would be to provide an additional method of closing streets or alleys, as provided, and being a later law, would amend Articles 1019 and 1020, Vernon's Civil Statutes, to the extent of any conflict.

Section 48 of Article III of the Constitution of Texas authorizes the Legislature to establish colleges and universities and support them out of the general revenue. Attorney General's Opinion V-818 (1949). In Mumme v. Marrs, 120 Tex. 383, 40 S.W.2d 31 (1931), the Supreme Court held:

"The history of educational legislation in this State shows that the provisions of Article VII, the educational article of the Constitution, have never been regarded as limitations by implication on the general power of the Legislature to pass laws upon the subject of education. This article discloses a well considered purpose on the

part of those who framed it to bring about the establishment and maintenance of a comprehensive system of public education, consisting of a general public free school system and a system of higher education. Three institutions of higher learning were expressly provided for . . . The Legislature, however, has gone far beyond the creation of the three institutions of higher learning specifically required by the organic law, and has created ten additional institutions of a similar character without direct constitutional grant, beginning with the Sam Houston Normal in Huntsville in 1879 . . . In founding these ten institutions, beginning more than fifty years ago, the Legislature has necessarily held that the specific grants of power contained in the Constitution to erect and maintain The University of Texas . . . were not limitations on its power to create other schools of similar purpose, and to maintain them by appropriations from the General Revenue. This interpretation has never been questioned, and is consistent with authorities from other jurisdictions . . ."

It is thus seen that the Legislature has the constitutional power to establish colleges and universities in addition to those provided for in Article VII of the Constitution of Texas, and the Legislature has the constitutional power to provide for the administration of such colleges and universities. See Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932); Heaton v. Bristol, 317 S.W.2d 86 (Tex.Civ.App. 1958, error ref., cert.den. appeal dism. 359 U.S. 230); Attorney General's Opinion C-525 (1965).

Therefore you are advised that the provisions of House Bill 487 are a constitutional and valid exercise of legislative power.

Your request is specifically concerned with whether the provisions are an unlawful encroachment of the city's power to enact ordinances regulating streets within their corporate limits. In this connection, it is well recognized that the governmental powers of municipal corporations are strictly limited by statutory provisions granting them. City of Uvalde v. Uvalde Electric and Ice Co., 250 S.W. 140 (Tex.Comm.App. 1923); San Antonio Independent School District v. Water Works Board of Trustees, 120 S.W.2d 861 (Tex.Civ.App. 1938). Thus, charter powers while plenary are subject

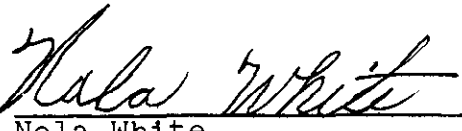
to the limitation that its charter and ordinances shall contain nothing inconsistent with state and federal constitutions or general laws enacted by the Legislature. Wagstaff v. City of Groves, 419 S.W.2d 441 (Tex.Civ.App. 1967, error ref. n.r.e.).

S U M M A R Y

House Bill 487 of the 62nd Legislature, R.S. 1971, authorizing certain state-supported colleges and universities to close a street or alley running through the campus would be a valid and constitutional law.

Very truly yours,

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